

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**05-CR-360A(Sr)**

**CHRIS CAIN,**

**Defendant.**

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**DECISION AND ORDER**

This case was referred to the undersigned by the Hon. Richard J. Arcara, in accordance with 28 U.S.C. § 636(b)(1), for all pretrial matters and to hear and report upon dispositive motions.

**PRELIMINARY STATEMENT**

The defendant, Chris Cain ("the defendant"), is named, along with co-defendants David Cain, Jr. and James Soha, in a multicount, "First Superseding Indictment" wherein he is charged with having violated Title 18 U.S.C. § 1951 (Count 15), Title 18, U.S.C. § 844(h) (Counts 14, 32), Title 18, U.S.C. § 1341 (Count 13), Title 18, U.S.C. §§ 1512(b)(1) and (d) (Count 25), Title 18, U.S.C. § 1512(b)(2)(C) (Count 16), Title 18, U.S.C. § 1962(c) (Count 30), Title 18 U.S.C. § 1962(d) (Count 31), and Title 21, U.S.C. § 846 (Count 12). (Docket #25). He has filed a motion wherein he seeks discovery pursuant to Rule 16(a)(1) of the Fed. R. Crim. P. And "to join in his co-defendants' motions." (Docket #63, pp. 1-2).

### **DISCUSSION AND ANALYSIS**

#### **1. Defendant's Discovery Request Pursuant To Rule 16(a)(1) Fed. R. Crim. P.:**

The essence of the defendant's request is that he requires production of all information and materials to which he is entitled under Rule 16(a)(1) of the Fed. R. Crim. P. (Docket #63, pp. 1-2).

The government has not responded to this request by the defendant. Therefore, the defendant's request is GRANTED and the government is hereby ORDERED to provide all information and materials to the defendant to which he is entitled as a matter of law under Rule 16(a)(1) of the Fed. R. Crim. P.

#### **2. Defendant's Request To Join In His Co-Defendants' Motions:**

The defendant "seeks leave to join in his co-defendants' motions." (Docket #63, p. 1). This request is GRANTED with the further directive and finding that the decision made by this Court as to each of the co-defendant's motions in which this defendant joins, shall also be deemed to be the finding and Order of this Court as to the defendant herein.

Therefore, it is hereby **ORDERED** pursuant to 28 U.S.C. § 636(b)(1) that:

This Decision and Order be filed with the Clerk of the Court.

**ANY OBJECTIONS** to this Decision and Order must be filed with the Clerk of this Court within ten (10) days after receipt of a copy of this Decision and Order in accordance with the above statute, Fed. R. Crim. P. 58(g)(2) and Local Rule 58.2.

The district judge will ordinarily refuse to consider *de novo*, arguments, case law and/or evidentiary material which could have been, but were not presented to the magistrate judge in the first instance. *See, e.g., Patterson-Leitch Co., Inc. v. Massachusetts Municipal Wholesale Electric Co.*, 840 F.2d 985 (1st Cir. 1988). **Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Judge's Order.** *Thomas v. Arn*, 474 U.S. 140 (1985); *Wesolek, et al. v. Canadair Ltd., et al.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 58.2 of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." **Failure to comply with the provisions of Rule 58.2, or with the similar provisions of Rule 58.2**

(concerning objections to a Magistrate Judge's Decision and Order), may result in the District Judge's refusal to consider the objection.

S/ H. Kenneth Schroeder, Jr.  
**H. KENNETH SCHROEDER, JR.**  
United States Magistrate Judge

**DATED: Buffalo, New York**  
**May 9, 2007**